



Virginia
Regulatory
Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	Virginia Department of Labor and Industry
VAC Chapter Number:	16 VAC 25-175-1926.754
Regulation Title:	Safety Standards for Fall Protection In Steel Erection, Construction Industry
Action Title:	Amendment to Slip Resistance of Skeletal Structural Steel and Appendix B of subpart R
Date:	March 9, 2006

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Note agency actions exempt pursuant to § 9-6.14:4.1(B) do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Federal OSHA has revoked paragraph (c)(3) of §1926.754, which establishes a slip-resistance requirement for the painted and coated top walking surface of any structural steel member installed after July 18, 2006.

Section 1926.754(c)(3) required that coated structural steel meet a specified level of slip resistance when measured using an American Society for Testing and Materials (ASTM) test method. At the time the final rule was issued, ASTM had developed testing methods for two testing machines; however, under ASTM rules, these standards were provisional, pending the completion of precision and bias statements for each. A precision and bias statement is documentation that the test method, in laboratory tests, has been shown to have an acceptable degree of repeatability and reproducibility. OSHA believed that completion of the precision and bias statements was critical to validate these test methods before they could be deemed acceptable for measuring slip resistance under the Standard. (71 FR 2880)

ASTM's technical developments, which needed to occur for employers to comply with the provision by its effective date of July 18, 2006, have not occurred. The ability to comply with the slip resistance provision depended upon two technical developments: (1) completed industry protocols for slip testing equipment; and (2) the availability of suitable slip resistant coatings.

Rulemaking comments indicated that the test methods were not likely to be completed by the July effective date because ASTM will not have completed the required validation process. Comments also indicated that ASTM will likely withdraw the test methods altogether because they are brand-specific rather than generic. Lack of completed test methods has delayed the development of suitable slip resistant coatings. Additionally, there has not been adequate testing of coatings to determine whether they have sufficient durability in the variety of applications in which they will be used, especially in corrosive environments.

The revoked testing methods specified in Appendix B of 1926 subpart R (Steel Erection) are:

- Standard Test Method for Using a Portable Inclinable Articulated Strut Slip Tester (ASTM F1677-96); and
- Standard Test Method for Using a Variable Incidence Tribometer (ASTM F1679-96)

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 7, 2006, the Safety and Health Codes Board adopted federal OSHA's revised final rule for the Safety Standards for Fall Protection in Steel Erection: Slip Resistance of Skeletal Structural Steel, 1926.754 (c)(3) and Appendix B of subpart R, Steel Erection, as published in 71 FR 2879 on January 18, 2006.

The effective date is June 15, 2006.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on the family is anticipated since §1926.754 (c)(3) was designed to supplement other requirements in subpart r that collectively form a strategy for reducing fatalities and injuries due to falls.